IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5417 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODBHAI JIVANBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MRS HANSA PUNANI, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner who is under preventive detention, has challenged the impugned order

of detention dated 15.5.2000 passed by the learned District Magistrate, Ahmedabad in exercise of powers conferred on him under sub-sec.(2) of sec.3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on the ground that the impugned order of detention is illegal, invalid, arbitrary and is violative of Articles 14, 19, 21 & 22 of the Constitution of India.

2. According to the detaining authority, the detenu was found involved in malpractice in kerosene supplied from Fair Price Shop. The reasons for arriving at subjective satisfaction are reflected in paras-7 to 15 of the grounds of detention. The impugned order of detention is challenged on various grounds, but learned counsel Mr. Prajapati appearing for the petitioner-detenu has confined his arguments mainly one one legal issue and has submitted that the impugned order of detention suffers from non-application of mind. The petitioner has tried to demonstrate non-application of mind by detaining authority by pointing out main two grounds in the petition in sub-para (j) & (l) of para-4 of the petition. I would like to reproduce the same to appreciate the submissions made by learned counsel Mr. Prajapati.

(j) The petitioner respectfully states that the detaining authority has relied on FSL report for the purpose of arriving at the subjective satisfaction that the petitioner is dealing with blue coloured kerosene. On page 24 copy of the letter dated 13.3.2000 has been supplied wherein nothing has been stated as to what seal applied to the sample. However, on page 26 in FSL report it is stated that on the sample there is a seal on the bottles "Gujarat State Elections". It is submitted that samples of 750 ml in three bottles were drawn in presence of panchas whereas on page 27 the sample was found of 700 ml. Further the samples were drawn by the Dy.Mamlatdar, Bavla whereas the samples were sent by the detaining authority to the FSL by giving code numbers. It is nowhere stated as to who has given the code number to the said samples. In absence of the same, it is very difficult to say that the FSL report is of the same sample which were drawn from the business place of the petition.

Therefore, the subjective satisfaction of the detaining authority gets vitiated. It is submitted the petitioner has demanded the photocopy of the letter dated 13.3.2000, copy of the material to connect the link between the sample drawn from the business place of the petitioner and the code number given to the same. However, the petitioner has not been supplied with the same and therefore, the petitioner has been deprived to make an effective representation against his illegal detention.

(k) xxx xxx xxx

(l) The petitioner respectfully states that the detaining authority has stated in para-17 of the ground of detention that the petitioner is not a licence holder and therefore no steps to be taken under the licence Order. However, in paragraph 14 it is stated that the petitioner is holding licence. Thus, contrary statements have been made by the detaining authority in grounds of detention itself. This shows total non-application of mind on the part of the detaining authority. Therefore, the subjective satisfaction of the detaining authority gets vitiated. "

xxx xxx xxx

3. It is clear from the above grounds that the method of taking sample of kerosene allegedly collected from one of the business premises of the petitioner, sealing of sample bottle, forwarding it to the FSL, quantum of sample reached to FSL, finding recorded by FSL etc. all give confused picture. It is not a matter of dispute that the petitioner, at the relevant point of time, was dealing in free-sale kerosene in the market and was also a Fair Price Shop Dealer authorised to sell coloured kerosene to the card-holders from his shop. There is reasonable distance between both these places. The detaining authority seems to have passed this order assuming that the petitioner must have developed some device to convert blue coloured kerosene into a transparent kerosene which is normally sold in free market. It is also reflected in the order that this white kerosene allegedly converted from the blue kerosene allotted to the petitioner for distribution, was used by

some of petroleum dealers. But after going through the number of documents provided to the petitioner and the fact that the detaining authority was not sure as to whether the petitioner could have been prosecuted for the irregularity committed by him, the detention order is passed. On one hand, detaining authority says that the petitioner is a licence holder and on the other hand the order says that as the petitioner is not a licence holder, no departmental proceedings or other legal proceedings can be initiated. Learned AGP Mrs. Punani has submitted on the strength of the affidavit filed by the detaining authority that since the petitioner was not holding a licence to deal in the business of white kerosene namely free-sale kerosene, no proceedings could have been initiated against him and, therefore, order of detention is passed and there is no contradiction in the structure of the order passed against the present petitioner. Both the grounds referred above are not satisfactorily replied by the detaining authority in the affidavit filed before this Court. Authority has tried to deal with both these grounds in a haphazard manner. On the contrary, plain reading of ground (j), report of FSL and affidavit by detaining authority as well as by concerned Deputy Secretary, reveals that no prudent officer normally could take harsh step like passing of order of detention where there is a doubt as to the genuineness as to the method adopted for collection of sample and to get the same analysed by FSL. Thus, this is a case wherein some alternative remedy could have been easily persuaded. It is not even the say of the detaining authority in the affidavit-in-reply that the petitioner was found responsible for such activities even prior to this very event. Fair Price Shop licence of the present petitioner could have been cancelled if he is found really guilty of the irregularities alleged to have been committed by him. Mr. Prajapati, learned counsel for the petitioner has rightly argued that the order of detention seems to have been passed in hot haste which has resulted into non-application of mind. It is settled legal position that the detaining authority must reach to the subjective satisfaction objectively and such decision should be reflected in the order of detention so that the petitioner can meet with the case against him, if he really intends to approach the very authority as per the scheme of the Act. In nutshell, the prayer of the petitioner to take the impugned order of detention in judicial review and to quash and set aside the same is accepted, in view of the fact that the impugned order of detention suffers from non-application of mind. Under the circumstances, since the impugned order of detention suffers from non-application of mind as the same is

without proper application of mind, it requires to be quashed and set aside.

4. Learned counsel Ms. Davawala has tendered affidavit-in-reply filed on behalf of respondent no.4 Union of India which is taken on record. However, Ms. Davawala has nothing to add as the grievances raised by the petitioner in this petition are mainly against respondent State of Gujarat and detaining authority.

5. For the reasons stated above, this petition is allowed. Impugned order of detention dated 15.5.2000 passed by learned District Magistrate, Ahmedabad against the petitioner-detenu Shri Vinodbhai Jivanbhai Prajapati is quashed and set aside. Rule is made absolute. No costs. Petitioner- detenu Shri Vinodbhai Jivanbhai Prajapati is ordered to be set at liberty forthwith if not required to be detained in connection with any other case.

DIRECT SERVICE is permitted.

25.8.2000 [C.K. BUCH, J]
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